

## Board of Fingerprinting

**TITLE 13. PUBLIC SAFETY****CHAPTER 11. BOARD OF FINGERPRINTING**

(Authority: A.R.S. §§ 41-619.53(A)(2) and 41-619.55(A)(1))

*Title 13, Chapter 11, consisting of Sections R13-11-101 through R13-11-105, adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3).*

**ARTICLE 1. BOARD OF FINGERPRINTING**

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**ARTICLE 1. BOARD OF FINGERPRINTING****R13-11-101. Applicability**

This Article applies to activities and persons identified in A.R.S. Title 41, Chapter 3, Article 12, except that R13-11-111 applies to all persons applying to the Department of Public Safety for a fingerprint clearance card pursuant to A.R.S. § 41-1758.03.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Amended by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-102. Definitions**

In this Article, the following definitions apply, unless the context otherwise requires:

1. "Appellant" means a person whose application for a fingerprint clearance card is denied or whose fingerprint clearance card is suspended by the Department; who is eligible to request a good cause exception from the Board pursuant to A.R.S. § 41-1758.03; and who submits a request pursuant to R13-11-103(A).
2. "Applicant" means a person who applies for a fingerprint clearance card pursuant to A.R.S. § 41-1758.03.
3. "Board" means the Board of Fingerprinting.
4. "Department" means the Department of Public Safety.
5. "Department's notice" means the notice of denial or suspension of a fingerprint clearance card that the Department sends to an applicant pursuant to A.R.S. § 41-1758.04.
6. "Expedited review" means an examination, in accordance with Board rules, of the documents an appellant submits by the Board or its hearing officer without the appellant being present.
7. "Good cause exception" means the issuance of a fingerprint clearance card to an appellant pursuant to A.R.S. § 41-619.55.
8. "Hearing officer" means an administrative law judge or other person hired by the Board, or if an agreement exists between the Board and the Office of Administrative Hearings, appointed by the director of the Office of Administrative Hearings, to determine good cause exceptions.

9. "Office" means the Office of Administrative Hearings.
10. "Request" means a person's written indication to the Board that he or she wishes to appeal for a good cause exception pursuant to A.R.S. § 41-619.55, along with a copy of all pages of the Department's notice. A person's dated signature on the Department's notice shall suffice as a written indication.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-102 renumbered to R13-11-103; new Section R13-11-102 made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-103. Request for Good Cause Exception**

- A. A person who meets the requirements of A.R.S. § 41-1758.03 and wishes to apply for a good cause exception shall submit a request to the Board within 30 calendar days of the date on the Department's notice.
- B. The Board shall send an application package within five business days to an applicant if one of the following applies:
  1. The applicant meets the requirement of R13-11-103(A).
  2. With good cause, the applicant submits a request in excess of 30 calendar days of the date on the Department's notice. An applicant demonstrates good cause by showing that the request could not have been submitted on time, using reasonable diligence. An applicant's failure to inform the Department of a change in address shall not constitute grounds for good cause. The Board's executive director shall determine whether good cause exists.
3. The applicant submits an incomplete request within 30 days of the Department's notice and subsequently completes the request. The Board shall determine a request incomplete if the request lacks one of the following:
  - a. A written indication that the applicant wishes to appeal for a good cause exception pursuant to A.R.S. § 41-619.55, or
  - b. The Department's notice or any of its pages.
- C. Within five business days, the Board shall send a notice to an applicant who submits an incomplete request. The notice shall indicate that the request is incomplete and what elements of the request are missing.
- D. The Board shall reject an applicant's request for a good cause exception and send a written notice of rejection within five business days if one of the following applies:
  1. The applicant submits a request in excess of 30 days of the date on the Department's notice, except as provided for in R13-11-103(B)(2).
  2. R13-11-103(B) notwithstanding, the applicant is not eligible to request a good cause exception under A.R.S. § 41-1758.03.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-103 renumbered to R13-11-104; new

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Section R13-11-103 renumbered from R13-11-102 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-104. Good Cause Exception Application**

- A.** An appellant shall submit the following materials to the Board to establish good cause for an exception:
1. The good cause exception application form prescribed by the Board. This form shall be notarized.
  2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
    - a. Both letters of reference shall be from individuals who have known the appellant for at least one year; and
    - b. At least one letter of reference shall be from the appellant's current or former employer or from an individual who has known the appellant for at least three years.
  3. If the Department's notice indicates that the Department could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the appellant either do not exist or have been purged.
  4. For any arrests that occurred five years or less prior to the date on the Department's notice, regardless of whether the arrests were listed on the Department's notice, the police report for each arrest and documents from the appropriate court showing the disposition of the charge.
  5. For every criminal conviction, regardless of whether the offenses were listed on the Department's notice, documents from the appropriate court showing that the appellant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the appellant either do not exist or have been purged. If the appellant has not met all judicially imposed obligations or sentencing conditions, the appellant shall provide a written statement indicating or documents from the appropriate court showing the status of the appellant's efforts toward meeting the obligations.
  6. A statement written by the appellant that explains each arrest, regardless of whether the arrests were listed on the Department's notice.
- B.** The Board shall accept any other documents an appellant submits to demonstrate good cause for an exception.
- C.** A good cause exception application shall be complete if it meets all the requirements of R13-11-104(A). A good cause exception application shall be incomplete if it does not meet all the requirements of R13-11-104(A).

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-104 renumbered to R13-11-105; new Section R13-11-104 renumbered from R13-11-103 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-104 renumbered to R13-11-109; new Section R13-11-104 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-105. Expedited Review**

- A.** Within 30 business days of receiving a complete application package, the Board or its hearing officer shall conduct an expedited review. When determining whether the appellant should receive a good cause exception under an expedited

review, the Board or its hearing officer shall consider the following:

1. The criteria listed in R13-11-108(A); and
  2. Whether the documentation submitted in support of a good cause exception is sufficient to allow the Board or its hearing officer to grant a good cause exception, or whether the Board or its hearing officer require further documentation or oral testimony.
- B.** If the Board or its hearing officer determine that the appellant is eligible for a good cause exception under an expedited review, the Board or its hearing officer shall grant the appellant a good cause exception.
- C.** If the Board or its hearing officer determines that an appellant is not eligible for a good cause exception under an expedited review, the Board or its hearing officer shall direct the Board's executive director to schedule, or request that the Office schedule, a hearing and inform the appellant of the determination in writing. The Board's executive director shall give the appellant reasonable notice of the hearing in accordance with the provisions of A.R.S. § 41-1061.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-105 renumbered to R13-11-106; new Section R13-11-105 renumbered from R13-11-104 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing**

- A.** An appellant who wishes to request that the Board or its hearing officer vacate or reschedule a hearing shall submit a written request to the Board.
- B.** The Board shall give an appellant written notification if a hearing has been vacated or rescheduled.
- C.** Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. The Department determines that it will issue the fingerprint clearance card that the appellant has requested;
  2. The appellant withdraws the appeal by submitting a written notice to the Board; or
  3. Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing if the action will further administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- D.** Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. The appellant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
  2. The appellant shows that attending the calendared hearing would be impossible, using reasonable diligence.
  3. Rescheduling the calendared hearing is necessary to give priority to a hearing for an appellant whose fingerprint clearance card was suspended over a hearing for an appellant whose application for a fingerprint clearance card was denied.
  4. Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.

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- E.** Continuing a hearing. When ruling on a motion to continue a hearing, the Board or its hearing officer shall consider such factors as:
  1. The reasons for continuing the hearing; and
  2. Whether the continuance will cause undue prejudice to any party.
- F.** Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

**Historical Note**

New Section R13-11-106 renumbered from R13-11-105 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-106 renumbered to R13-11-110; new Section R13-11-106 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-107. Telephonic Testimony**

- A.** An appellant who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.
- B.** The Board or its hearing officer may allow the appellant or the appellant's witness to submit telephonic testimony at the hearing if:
  1. Personal attendance by the appellant or the appellant's witness at the hearing will present an undue hardship for the appellant or the appellant's witness;
  2. Telephonic presence will not cause undue prejudice to any party; and
  3. The appellant or appellant's witness assumes the cost of testifying telephonically.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-107 renumbered to R13-11-111; new Section R13-11-107 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-108. Hearings**

- A.** When determining whether an appellant should receive a good cause exception at a hearing, the Board or its hearing officer shall consider whether the appellant has shown to the Board or its hearing officer's satisfaction that the appellant is not awaiting trial on or has not been convicted of committing any of the offenses listed in A.R.S. § 41-1758.03 or that the person is successfully rehabilitated and is not a recidivist. The Board or its hearing officer shall consider the following:
  1. The extent of the appellant's criminal record;
  2. The length of time that has elapsed since the offense was committed;
  3. The nature of the offense;
  4. Any applicable mitigating circumstances;
  5. The degree to which the appellant participated in the offense; and
  6. The extent of the appellant's rehabilitation, including:
    - a. Completion of or progress toward completing probation, parole, or community supervision;
    - b. Completion of payment or progress toward paying restitution or other compensation for the offense;
    - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling;
    - d. Personal references attesting to the appellant's rehabilitation; and
    - e. Witness testimony that the appellant submits.

- B.** Absent good cause, if the appellant or his or her representative fail to appear at a hearing, the Board or its hearing officer shall proceed with the hearing and deny the applicant a good cause exception for failure to appear at the hearing. An appellant demonstrates good cause by showing that the appellant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An appellant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board or its hearing officer shall determine whether good cause exists.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-109. Notification of Decision for Good Cause Exception**

- A.** The Board shall notify the appellant in writing of the Board's decision and, if the good cause exception is granted at a hearing, transmit findings of fact and conclusions of law.
- B.** When the Board or its hearing officer grant a good cause exception, the Board's executive director shall request, in writing, the Department to issue a fingerprint clearance card.

**Historical Note**

Section renumbered from R13-11-104 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-110. Confidentiality**

All information relating to an applicant or appellant's criminal history is confidential and shall not be disseminated or disclosed except as required by law.

**Historical Note**

Section renumbered from R13-11-106 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).

**R13-11-111. Fees**

- A.** The Department shall collect proper fees for good cause exceptions from all applicants and shall transmit the fees to the state Treasurer. A fee of \$3.00 is established for good cause exceptions.
- B.** Fees shall be paid in addition to and in the same payment as fees paid to the Department for a fingerprint clearance card application. Fees shall be paid by money order, cashier's check, or check drawn on a business account. If a state agency is paying the fees, the state agency may transfer the funds to the Department by using a companion transaction transfer form.
- C.** If the financial institution does not clear a check offered in payment for services pursuant to subsection (B), the Department shall notify the applicant to pay the fees by money order or cashier's check. If a fingerprint clearance card has been issued, the Department shall suspend the fingerprint clearance card until the fees are paid by money order or cashier's check. If a fingerprint clearance card has not been issued, the Department shall not issue a fingerprint clearance card or the Department's notice until the fees are paid by money order or cashier's check.

**Historical Note**

Section renumbered from R13-11-107 by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3).